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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 STEVEN CHESTER POPE,

7 Petitioner,

8 v.

9 DANIEL HOLBROOK,

10 Respondent.

Case No. C17-5679 BHS-TLF

ORDER GRANTING LEAVE TO  
AMEND OR TO SHOW CAUSE

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12 Petitioner Steven Chester Pope filed a petition for writ of habeas corpus pursuant to 28  
13 U.S.C. §2254. Dkt. 3. Petitioner challenges his convictions for two counts of second degree child  
14 rape, two counts of second degree child molestation, two counts of third degree child rape and  
15 molestation, and domestic violence. He alleges that his trial counsel “tricked” him into his guilty  
16 plea, that he pled guilty because he was mentally coerced into doing so, and that trial counsel  
17 stated that he could not represent him effectively because petitioner had “confessed.” Dkt. 3, at  
18 7. However, petitioner has not presented his arguments to any Washington courts before  
19 presenting them here. Dkt. 3 at pp. 2-4 (indicating that he did not appeal, or file a post-conviction  
20 petition to challenge his convictions or sentences in the appellate courts).

21 All of petitioner’s claims remain unexhausted. Moreover, his claims may be time-barred.  
22 Therefore, the Court will allow petitioner to amend or to show cause why this action should not  
23 be dismissed.

1 **BACKGROUND**

2 On April 7, 2016, petitioner pled guilty to two counts of second degree child rape, two  
3 counts of second degree child molestation, two counts of third degree child rape and molestation,  
4 and domestic violence. Dkt. 1, at 1. He explains that he believes he received ineffective  
5 assistance of counsel, noting that he was “mentally coerced” into the guilty plea due to his  
6 “mental/communication skill problems.” Dkt. 1, at 5, 8. He also alleges that his counsel only  
7 made a “mild attempt” to have him evaluated for competency. Dkt. 1, at 10. He notes that he has  
8 not raised either a direct appeal because he had no money to hire legal help and he no longer  
9 “trusts” state-appointed help. Dkt. 1, at 6. He asks this Court for release from conviction. Dkt. 1,  
10 at 16.

11 **DISCUSSION**

12 **A. Exhaustion**

13 Petitioner raises four grounds for habeas relief. However, he failed to raise these grounds  
14 in the state courts before presenting them here. “[A] state prisoner must normally exhaust  
15 available state judicial remedies before a federal court will entertain his petition for habeas  
16 corpus.” *Picard v. Connor*, 404 U.S. 270, 275 (1971). A petitioner’s claims are only exhausted  
17 after “the state courts [have been given] a meaningful opportunity to consider allegations of legal  
18 error without interference from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257  
19 (1986). “State prisoners must give the state courts one full opportunity to resolve any  
20 constitutional issues by invoking one complete round of the State’s established appellate  
21 review.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

22 Here, petitioner has not properly exhausted these claims. He has not given Washington  
23 State courts the opportunity to rule on any of his habeas claims because he has not presented  
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1 them in either a direct appeal or a personal restraint petition. Therefore, petitioner has not  
2 allowed the Washington State courts a full opportunity to review them. *Vasquez*, 474 U.S. at 257.  
3 The claims are unexhausted, and this Court will not review unexhausted claims. *Picard*, 404 U.S.  
4 at 275.

### 5 **B. Statute of Limitations**

6 The Antiterrorism and Effective Death Penalty Act (AEDPA) established a statute of  
7 limitations for petitions filed by prisoners challenging their custody under a state court judgment  
8 and sentence. 28 U.S.C. § 2244(d). Where the challenged judgment became final after April 24,  
9 1996, the statute generally begins to run from “the date on which the judgment became final by  
10 conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. §  
11 2244(d)(1)(A). For purposes of 28 U.S.C. § 2244(d)(1)(A), direct review generally concludes  
12 and the judgment becomes final either upon the expiration of the time for filing a petition for  
13 writ of certiorari with the Supreme Court, or when the Court rules on a timely filed petition for  
14 certiorari. *Bowen v. Roe*, 188 F.3d 1157, 1158-59 (9th Cir. 1999). The time period for seeking  
15 certiorari is ninety days, according to the Supreme Court Rule 13. *Id.*

16 However, the judgment becomes final on an earlier date where the direct review has  
17 terminated prior to reaching the state’s highest court. *Gonzalez v. Thaler*, 132 S. Ct. 641, 652-56  
18 (2012); *Wixom v. Washington*, 264 F.3d 894 (9th Cir. 2001). If the petitioner never files a timely  
19 direct review, the direct review process concludes upon expiration of time for seeking such  
20 review, and the judgment becomes final on that date. *Gonzalez*, 132 S. Ct. at 653-54.

21 Here, petitioner entered a guilty plea on April 7, 2016. Dkt. 1, at 1. As of the date of his  
22 petition on September 5, 2017, he states he has not sought to appeal or file for post conviction  
23 relief in state court concerning his convictions or sentences. Dkt. 3 at pp. 2-4. Accordingly, it  
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1 appears that his judgment became final over a year ago, past the statute of limitations. As such,  
2 his petition would appear to be time-barred from consideration.

3 In addition, petitioner fails to show any basis for equitable tolling. The AEDPA statute of  
4 limitations is subject to equitable tolling where the petitioner pursued his rights diligently and  
5 “some extraordinary circumstance stood in his way.” *Holland v. Florida*, 560 U.S. 631, 649  
6 (2010) (*quoting Pace*, 544, U.S. at 418). Equitable tolling is appropriate where external forces,  
7 rather than the petitioner’s lack of diligence, account for the failure to file a timely petition.  
8 *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999). Whether a petitioner is entitled to equitable  
9 tolling is a fact-specific inquiry. *Whalem/Hunt v. Early*, 233 F.3d 1146, 1148 (9th Cir. 2000) (en  
10 banc). To receive equitable tolling, a petitioner at the very least must show the extraordinary  
11 circumstances “were the but-for and proximate cause of his untimeliness.” *See Miles*, 187 F.3d at  
12 1105-07 (equitable tolling appropriate where prison official failed to properly process for mailing  
13 a timely submitted petition); *Frye v. Hickman*, 273 F.3d 1144 (9th Cir. 2001) (equitable tolling  
14 not appropriate where attorney miscalculated the statute of limitations deadline). Petitioner does  
15 not demonstrate any extraordinary circumstance that prevented him from filing a timely habeas  
16 corpus petition.

### 17 CONCLUSION

18 Petitioner must file, **on or before December 15, 2017**, an amended petition under 28  
19 U.S.C. § 2254 alleging facts, if any, showing that his grounds for relief have been properly  
20 exhausted in state court and otherwise showing cause why this matter should not be dismissed.  
21 Alternatively, petitioner may show cause why this action should be *stayed* or *voluntarily*  
22 *dismissed without prejudice* to allow him to present his argument before the Washington courts.  
23 If the Washington courts decline to grant him relief and he properly exhausts his state options, he  
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1 may return to this Court and file a new habeas petition.

2 Failure to timely comply with this Order will result in a recommendation that this action  
3 be dismissed without prejudice.

4 The Clerk shall send a copy of this order to petitioner and the Court's habeas corpus form  
5 petition for 28 U.S.C. § 2254 petitions.

6 Dated this 16th day of November, 2017.

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10 Theresa L. Fricke  
11 United States Magistrate Judge  
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